INDEX.

Page

FIRST. This court will not reexamine a judgment of the United States Court of Appeals for the District of Columbia on matters of local law relating to the District of Columbia 1

SECOND. The judgment of the United States Court of Appeals for the District of Columbia is plainly right that under the local statutes, to which all policies of insurance are subject, the administrator of the wife, the named beneficiary in the life insurance policy, is "entitled to its proceeds and avails against the representatives and creditors of the insured" 1

1. This Court Will Not Reexamine the Judgment of the United States Court of Appeals in This Case.. 2

2. The Judgment of the United States Court of Appeals is Plainly Right 4

CONCLUSION 7

Table of Cases.

American Security & Trust Co. v. District Commissioners of D. C., 224 U. S. 491, 56 L. Ed. 856..... 2

Busby v. Electric Utility Employees' Union, 323 U. S. 72, 89 L. Ed. 78 2

Cohen v. Samuels, 245 U. S. 50 6

Del Vecchio v. Bowers, 296 U. S. 280, 80 L. Ed. 229.... 3

District of Columbia v. Pace, 320 U. S. 698..... 3

Kittell v. Domeyer, 175 N. Y. 205, 67 N. E. 433..... 7

New York Life Insurance Co. v. Cravens, 178 U. S. 389 4

United Surety Co. v. American Fruit Products Co., 238 U. S. 140, 59 L. Ed. 1238 2

Statutes.

Act of March 3, 1901, D. C. Code 1940, Title 30, Secs. 213, 214 2-3

Act of June 19, 1934, D. C. Code 1940, Title 35, Sec. 716 2-3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 743.

THE LINCOLN NATIONAL BANK OF WASHINGTON, ET AL., Executors of the Estate of Michael E. Buckley, *Petitioners,*

v.

KARL KINDLEBERGER, Administrator of the Estate of JULIA C. BUCKLEY, *Respondent.*

BRIEF FOR RESPONDENT IN OPPOSITION TO THE ISSUANCE OF A WRIT OF CERTIORARI.

Respondent opposes the issuance of a writ of certiorari on two grounds:

FIRST. This court will not reexamine a judgment of the United States Court of Appeals for the District of Columbia on matters of local law relating to the District of Columbia.

SECOND. The judgment of the United States Court of Appeals for the District of Columbia is plainly right that under the local statutes, to which all policies of insurance

are subject, the administrator of the wife, the named beneficiary in the life insurance policy, is "entitled to its proceeds and avails against the representatives and creditors of the insured".

1. This Court Will Not Reexamine the Judgment of the United States Court of Appeals in This Case.

The Act of March 3, 1901, D. C. Code 1940, Title 30 Sections 213 and 214 (R. 17) applies only to the District of Columbia, and creates a vested interest in the wife in all policies of insurance with the provision that in case of her death her children, or if there are no children, her legal representatives shall be entitled to the proceeds.

The Act of June 19, 1934, D. C. Code 1940, Title 35, Section 716 (R. 16), the construction of which by the court below is challenged, has no force and effect outside of the District of Columbia. Neither of these statutes has any general application, and the issuance of a wirt of certiorari would seem to be governed by the decisions of this court, that its jurisdiction to reexamine final judgments or decrees of the United States Court of Appeals for the District of Columbia, in which the construction of a statute is drawn in question, does not extend to cases where the Act of Congress construed by that court is purely local law relating to the District of Columbia, but that jurisdiction extends only to those having a general application throughout the United States.[1]

In *Busby* v. *Electric Utility Employees' Union*[2], Busby sued an unincorporated union with a principal office in the District of Columbia, with service of process upon the president of the union. The Court of Appeals certified to this court the question of whether or not such a union was suable in an action of debt brought against it here.

---

[1] *American Security & Trust Co.* v. *District Commissioners of D. C.*, 224 U. S. 491, 56 L. Ed. 856. *United Surety Co.* v. *American Fruit Products Co.*, 238 U. S. 140, 59 L. Ed. 1238.

[2] 323 U. S. 72, 89 L. Ed. 78.

The Supreme Court dismissed the certificate, saying (p. 80):

> "Only in exceptional cases will this Court review a determination of such a question by the Court of Appeals for the District."

This court has refused to review the decision of the Court of Appeals as to which of the inconsistent provisions of the local statutes should govern[3].

While the court reviewed a decision under the Longshoreman's Act, having a general application but made applicable to the District of Columbia, in doing so, reiterated:

> "We will not ordinarily review decisions of the United States Court of Appeals which are based upon statutes so limited or which declare the common law of the District."[4]

The petitioner attempts to bring this case within the provisions of Rule 38(c) by contending that the United States Court of Appeals for the District of Columbia has decided a question of general importance, which has not been but should be settled by this court. We submit that this provision was not intended to enlarge the right or discretion of this court to reexamine the final judgment of the United States Court of Appeals as to the construction of a local statute.

To support this contention, it is asserted in the brief for the petitioner that a statute similar to the Act of June 19, 1934 exists in eleven states of the union. No assertion is made that in any of these states which have a statute similar to the Act of June 19, 1934 is there a statute comparable to the Act of March 3, 1901, vesting in her all policies of life insurance to be taken out for the benefit of the wife. It is nowhere asserted that this question has arisen in any of the states named in the petitioner's brief, or been de-

---

[3] *D. C.* v. *Pace*, 320 U. S. 698.

[4] *Del Vecchio* v. *Bowers*, 296 U. S. 280, 80 L. Ed. 229.

cided by those states contrary to the decision of the Court of Appeals here.

But, aside from this, it is hardly to be contended that if Massachusetts or New York had construed its statute, either as the majority opinion or the minority opinion below construed this statute, the operation of the statute being limited to the state, this court either could or would grant a writ of certiorari to test the correctness of the decision of the highest court of either of those states on a question of the substantive law of the state.

In the language of Mr. Justice Frankfurter, concurring in the *Busby* case, supra:

> "If a suit like this were brought in the District Court for the Southern District of New York under diversity jurisdiction, no conceivable question other than that of the procedural or substantive law of the State of New York could arise. No federal question is infused into the litigation because such a local suit was brought in the District of Columbia." (p. 77)

No federal question is involved in this case. It is a question merely of the substantive law of the District of Columbia and does not raise any issue of the federal law. The decision of the highest court of the District of Columbia is entitled in such case to the same dignity and conclusiveness as the judgment of the courts of last resort in the several states.

2. The Judgment of the United States Court of Appeals is Plainly Right.

The authorities heretofore cited herein would seem to preclude the reexamination of the judgment below. If, however, the court should consider the terms of the statutes, a writ of certiorari should be denied, because the judgment below is plainly right. The court below held that in a conflict between the provisions of insurance contracts and those of the statute, ordinarily the statute controls[5]

[5] *New York Life Insurance Co.* v. *Cravens*, 178 U. S. 389.

"and it expressly undertakes to do so in this case". (R. 20) It further held:

> "that the effect of the statute is to give the proceeds of a policy such as it describes to the personal representatives of the beneficiary or assignee if the beneficiary or assignee does not survive the insured. This is limited, of course, to situations in which the insured did not exercise, after the death of the beneficiary, the right to designate another." (R. 19)

The view contended for by the petitioner in the analysis of the statute is stated in the dissenting opinion as follows: (R. 24)

> "Specifically, it is my view that the word 'his' in the phrase 'or his executors or administrators' refers to the insured and not to the beneficiary. The expression 'lawful beneficiary, other than the insured, his executors or administrators' seems to be a common one in the insurance field."

The contrary view is expressed in the opinion of the court as follows: (R. 16)

> "We have no doubt that the word 'beneficiary' is the antecedent of the word 'his' in the statutory phrase 'or his executors or administrators'; and that the meaning, therefore, is that the lawful beneficiary, or his executors or administrators, shall be entitled to the proceeds against the creditors and representatives of the insured."

If the majority opinion below is not correct and the phrase "his executors and administrators" does not mean the beneficiary's executors or administrators, the provision has no meaning and the phrase no field of operation, for after the death of the insured a named beneficiary in the policy or assignee, if living, is entitled to its proceeds against the creditors and representatives of the insured without any statutory declaration to this effect. Clearly too, there are no "proceeds" of the policy until the death of the insured,

and no "representative" of the insured until his death. It therefore needed no legislation to insure the right of a living beneficiary named in a policy or an assignee to its proceeds after the death of the insured against the claims of creditors and the representatives of the insured.

It is contended for the petitioner that this statute was enacted to meet *Cohen* v. *Samuels*, 245 U. S. 50, holding that the trustee in bankruptcy was entitled to the cash value of policies where the right to change the beneficiary was reserved. If Congress desired to limit this statute to protecting the cash surrender value of the policy, it would have used appropriate terms and would not have used the term "proceeds", which in ordinary parlance means the value of the policy maturing by the death of the insured.

Further analysis of the statute fully confirms the construction given to it by the court below. One of the lawful beneficiaries within the purview of the statute is a bona fide assignee of the policy, and whether the statute be considered one of "exemption" or "distribution", it was designed to protect the interests of a lawful beneficiary including a bona fide assignee in the proceeds of the policy. Certainly the living bona fide assignee of a policy needed no legislation to protect his interest from the bankrupt court or elsewhere. Even a change of beneficiary did not disturb his assignment, and the statute is careful to protect his rights.

The plain object of the statute is to protect the estate of the beneficiary or assignee predeceasing the insured "against the creditors and representatives of the insured", where "the right to change the beneficiary" is reserved but not exercised, and where the policy is made payable to the insured "if the beneficiary or assignee shall predecease" the insured.

Any other construction leaves the "proceeds" of a policy designed to protect the wife and children to the mercy of the creditors and defeats the object of the statute and, as before said, leaves no field of operation in the statute for the phrase "his executors or administrators".

The wife's right and the right of her executors and administrators to the proceeds of this policy,

> "did not rest upon contract but legislative grant by way of exemption from the claims of creditors of an insurance fund created by the husband's annual appropriation or investment of his monies"[6]

The statute gave her a vested right and not one contingent upon her surviving her husband.

The *ad hominem* argument that such a construction would cause great public inconvenience to policyholders and life insurance companies seem to have little weight. As pointed out by the court below, this statute does not prevent either an assignment of the policy or a change of beneficiary, and the decedent in this case had several years after his wife's death within which to change the beneficiary if he had so desired.

So far as the inconvenience to life insurance companies is concerned, it is as easy to pay the proceeds of a policy to the executors or administrators of a beneficiary as to the executors or administrators of the insured, and if in the sporadic cases in the District of Columbia, if any, the insurance companies have disregarded the vested interest of the wife in such policies, as plainly declared by the statute, the insurance companies are alone responsible.

CONCLUSION.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

LESLIE C. GARNETT,
SAMUEL F. BEACH,
331 Tower Bldg.,
Washington, D. C.,
Attorneys for Respondent.

---

[6] *Kittell* v. *Domeyer*, 175 N. Y. 205, 67 N. E. 433.